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X? XX? Or XXX? The Internet and Pornography Editorial Essay



Editorial Essay by Jeffrey Barlow

One of the undeniable impacts of the Internet has been the act that it has clearly accelerated the distribution of “pornography”. [1] In our July Berglund Summer Institute [2] our topic was "Web 2.0: The Wisdom and Madness of Crowds." From our keynote speaker, Ward Cunningham, the inventor of the Wiki, through all of our speakers, we heard much of wisdom and very little of madness. As the last speaker, I felt it my duty, and perhaps my special talent, to introduce at least a touch of madness to the discussion.

I did so by raising some recent criticism of the Internet, and particularly of Web 2.0, which is, of course, a general term used to describe the user-created portion of the web, particularly interactive social sites and other distributed sites where many authors produce content. Two works that I chose to single out raise the issue of pornography. These were:

Siegel, Lee. *Against the Machine. Being Human in the Age of the Electronic Mob*. New York: Spiegel & Grau, 2008.

and

Keen, Andrew. *The Cult of the Amateur: How Today's Internet is Killing Our Culture*. New York, Doubleday, 2007.

We have reviewed Keen earlier and will review Siegel in a future posting of *Interface*. [3] While these books are quite different in tone, both focus ostensibly upon Web 2.0 and generally agree on the Internet's crimes and failings, including pornography. According to Siegel, the Internet has commercialized pornography, making it commonplace and

less objectionable. Keen fulminates that the Internet plays host to "...an infestation of anonymous sexual predators and pedophiles." [4]

At *Interface*, we have, for quite some time, been searching for an editor both capable and desirous of dealing with the inflammatory issue of the Internet and "pornography".

Perhaps because of these very controversies, we have been unsuccessful in finding such an editor and hence have decided to take matters into our own hands. Classically, intellectuals who write pornography or who write about it resort to pseudonyms or risk losing their jobs or at least their reputations in polite company.

In preparation for writing this editorial we slunk down to Powell's City of Books, to the intersection of "Mystery" and "Erotica." There we hoped to find some works which would be useful sources for our research. Though we did not find any immediately relevant titles, we did purchase a couple of anthologies and subsequently read them, out of a sense of duty, of course. [5]

Our reading of these works indicates that so far as anthologies go, Susie Bright is certainly the editor to beat. She has been editing erotic anthologies for a number of years and has at least fourteen titles out at present. [6]

We emailed Ms. Bright, inviting her to write for us, discussing the issue of the impact of the Internet on adult literature. She was very helpful, but as might be expected from somebody who has published at least fourteen books, also quite busy with lecturing and writing, and at least temporarily, demurred. Hence, we are on our own; we will attempt some observations then, based on our extremely limited research.

In resorting first to written materials in order to enhance our understanding we were, of course, following an old path. The first extended discussion over pornography in the United States took place following the 1934 publication in Paris of Henry Miller's *Tropic of*

Cancer. The work was then banned in the United States but proved to be the book that substantially changed pornography laws here when many intellectuals championed it, not under the laws of free speech, but as "art." [7]

So for a long time, then, *pornography* meant first and foremost written materials. But those attempting to see a connection between written pornography and the Internet, as I initially attempted to do, will be disappointed.

After reading several works of fiction and a number of anthologies, and browsing sexually themed material on the Internet, it seems to me incontestable that the impact of the Internet on pornographic writing has been minimal in terms of content, subject, style, plot—you name it. There is no indication in anything that I have seen that we should consider the Internet as anything other than an electronic means of publishing, so far as written erotica is concerned. I would be delighted to learn of pertinent works which contradict this conclusion.

What the Internet has clearly done, however, is to exponentially increase access to a much wider array of erotic materials. This has, for younger generations, changed the very definition of pornography. The current college generation is largely puzzled at the notion that *writing* could be pornographic in any legal sense. To them, pornography is graphical—pictures. [8]

For quite some time, graphical erotica meant "men's magazines," notably of course, *Playboy*. After hitting a high of 6.6 million copies in circulation in 1972 and expanding to include film production, by 1986 circulation was down to 3.4 million; by 2005, down to about 3 million. In the fall of 2005, it began to offer a digital on-line edition. [9] In 1996 Congress, like *Playboy*, noticed this seismic shift in the distribution of adult materials and passed the Communications Decency Act in an unsuccessful attempt to control porn on the Internet. [10]

At that time it was estimated that Americans spent about \$5 billion to \$8 billion on porn each year; sex sites accounted for 40% of all Internet traffic; satellite and cable operators earned about \$800 million a year from adult movies, or about 40% of pay TV and on-demand TV revenue. [11] All of these, with the exception of the declining men's magazines and analogue video, are digital materials, illustrating the impact of such materials on the print industry.

This replacement of writing and print by digital materials is clearly an impact of the Internet, and of digitization in general. Digital porn is much cheaper to produce than printed materials or analogue films, and, most importantly far cheaper to disseminate via the Internet.

The impact of the Internet was immediate and substantial. We leave the definition of pornography up to attorneys, but clearly there is a lot more of *something* out there. A Google search on the term "sex cam" for example will turn up 7,280,000 hits, most of them sites purveying apparently either downloadable or real-time actual or simulated sexual activity. A search on "XXX" will turn up an incredible 360,000,000 hits. X-rated films and film clips are all over the Internet, and for the very patient who are willing to invest in the fastest computer gear and Internet connections, now downloadable from vast archival sites. This has not only made pornographic or adult materials much more widely available, it has also introduced two new complexities.

One of these complexities is that this new digital pornography is, emphatically, not high culture. One of the criticisms fundamental to both the works of Siegel and of Keen cited above is precisely this: the Internet has made it possible for a lot of amateur writers to be read. Very often their voice is raw, even ugly—at least by traditional or professional standards.

There is a world of difference between this new Internet erotica, and Henry Miller's works. This shift in what we might call the class basis of pornography [12] is one factor that makes it a particularly controversial issue. While intellectuals might side with a noted erotic writer, at least

after a few recognizably important literary figures have done so, few are likely to rally behind even a small percentage of the digital adult materials as in any manner an artistic expression. It is perhaps relevant to note that whereas adult materials were once defended, like the *Tropic of Cancer*, on the grounds that they were art or literature, the main defense of such materials has now become that they are protected by freedom of speech or expression.

The second complicating factor resulting from the rapid growth of the Internet is its impact on the doctrine of community standards, for some time the foundation of legal prosecutions of pornography.

One of the two books reviewed in Interface this month, John Burdett's *Bangkok Haunts*, introduced us to an important report by Timothy Egan in *The New York Times* from 2000, "Erotica Inc.—a Special Report: Technology Sent Wall Street into Market for Pornography" [13] which speaks directly to the issue of community standards. It also deals not with written pornography, but with graphical images, also an important element of the new environment in which pornography is usually prosecuted or discussed.

Egan's piece dealt with a widely reported case in a very conservative county of Utah wherein a local video storeowner was charged with renting pornographic films in violation of community standards.

However, when the Defense Attorney on the case, a Mr. Spencer, checked into video rentals at the Marriot hotel in Provo Utah, where the trial was being held, he found that the Marriot did a booming business in renting adult videos, in some cases the same titles that his client was charged with renting. As Egan relates:

Why file criminal charges against a lone video retailer, Mr. Spencer argued, when some of the biggest corporations in America, including a hotel chain whose board of directors includes W. Mitt Romney, president of the Salt Lake City Olympics organizing committee, and a

satellite broadcaster heavily backed by Rupert Murdoch, chairman of the News Corporation, were selling the same product?

"I despise this stuff -- some of it is really raunchy," said Mr. Spencer, a public defender who described himself as a devout Mormon. "But the fact is that an awful lot of people here in Utah County are paying to look at porn. What that says to me is that we're normal." [14]

The plaintiff was immediately acquitted. The Governor of Utah, however, responded by seeking funding for a "pornography czar" at the state level to help local communities successfully prosecute subsequent cases. [15]

The legal argument for prosecuting, or even defining pornography in the United States has, for more than forty years, rested on the issue of "community standards." [16] That is, pornography is what the community (in practice we can define "community" as the group from which jurors might be drawn in attempted prosecutions of pornography cases) says it is.

This question of local standards, while establishing a legal basis for defining pornography after courts groped for almost 20 years to do so following the 1957 Supreme Court ruling in *Roth v. United States*, opened up additional issues. It was the gap between public protestations as voiced in laws, and private behavior as practiced in large chain hotels that resulted in the Utah acquittal.

These two complexities are nothing, however, compared to the coming storm threatening attempts to control or prosecute pornography. The ability to download films on demand to one's private space will have a number of immediate consequences. First, the tattered community standards defense will be very difficult to uphold; it will be almost impossible to prove that any community as such was impacted. Secondly, the distributor, rather than being easily arrested and tried, will likely be in some distant land with little or no interest in such prosecutions. Thirdly, as Egan points out, the fact that large commercial

interests are even now engaged in production and distribution means that any attempts to legislate or prosecute will encounter opponents with very deep pockets indeed.

All of these are reasons why, I think, the question of how to control pornography is increasingly restricted to issues dealing with children. [17] By so doing, we surely approach what is a near-universal human value: children should not be sexually exploited and may well be harmed by viewing sexual activity at an age when they are unable to understand its nature. [18] This issue is not proving any easier to adjudicate than were earlier attempts to control pornography. But we are probably safe in thinking that most of us know this particular form of pornography when we see it, and that we may have a true community standard, hopefully even a global one.

[1] We place this term into quotation marks upon first using it in each of the articles in which it appears in this issue, to remind our audience that the meaning of the term is highly contested, and that one person's pornography may well be another's erotic writing, or perhaps even "normal" or "ordinary."

[2] See <http://bcis.pacificu.edu/summerinstitute/2008/>

[3] See Keen review at <http://bcis.pacificu.edu/journal/2007/05/hershock.php>

[4] Keen, 7.

[5] Russ Kick (ed.) *Hot off the Net*, erotic and other sex writings from the Internet San Francisco: Black Books, 1999, initially seemed very promising, but the Internet in fact figures in none of the works included as far as I found. The work does contain a list of erotic sites in the appendix, most of which no longer exist based on my sampling. We also picked up Susi Bright (ed.) *The Best of Best American Erotica* 2008. New York: Touchstone, 2008.

- [6] See her pages at:
http://susiebright.blogs.com/susie_brights_journal_/Resume_Susie_Bright.html
- [7] There is a strongly appreciative piece on Miller in Wikipedia, found at: http://en.wikipedia.org/wiki/Henry_Miller
- [8] My source here is a discussion with our web master, Maria Walters, a graduating math major at Pacific University.
- [9] See USA Today, Money, "Playboy to hit Internet with digital edition" 8/24/2005 at http://www.usatoday.com/money/media/2005-08-24-playboy-online_x.htm
- [10] See complete text at: <http://www.fcc.gov/Reports/tcom1996.txt>
The act, of course, was quickly ruled unconstitutional.
- [11] See Michael Brush, "Company Focus: Can Playboy pull a rabbit out of the hat? MSN Money, 11.23.2005 found at:
<http://moneycentral.msn.com/content/P133917.asp>
- [12] There has always been a lower-class pornography, but those raised safely in the middle classes rarely saw it. Now, we assert totally without evidence, it is pushing out the safer sanitized airbrushed versions that were once dominant.
- [13] See the report online at:
<http://query.nytimes.com/gst/fullpage.html?res=9B01EEDA1631F930A15753C1A9669C8B63#>
- [14] <http://query.nytimes.com/gst/fullpage.html?res=9B01EEDA1631F930A15753C1A9669C8B63#>
- [15] There is additional material on this case and its antecedents to be found at: BMICHAEL JANOFISKY, "Utah Law Creates First 'Pornography Czar'" *The New York Times* March 16, 2000, found at:

<http://query.nytimes.com/gst/fullpage.html?res=9905E4D81F3BF935A25750C0A9669C8B63>

[16] For a discussion that is at least comprehensible on the legal history of this issue with particular relevance to pornography and the Internet, see: <http://www.enotes.com/everydaylaw-encyclopedia/pornography> We reproduce from the above site the legal history of this issue here:

"Milestones in the development of Internet pornography law include the following:

- The Supreme Court established that obscenity is not protected by the First Amendment in *Roth v. United States* (1957), declaring obscenity to be "utterly without redeeming social importance."
- After subsequent cases showed the difficulty of finding a conclusive definition of obscenity, the Court restated its definition in *Miller v. California* (1973). It substituted a detailed three-part test ultimately to be used by each locality—the so-called "community standards" test.
- The Court ruled that child pornography is not a form of expression protected under the constitution in *New York v. Ferber* (1982). It has also upheld a state law prohibiting the possession and viewing of child porn in *Osborne v. Ohio* (1990).
- Seeking to control Internet porn, Congress first passed legislation in 1996. The Communications Decency Act (CDA) criminalized the dissemination over computer networks of obscene or indecent material to children. Immediately blocked from enforcement by the courts, it was ruled unconstitutional under the First Amendment in 1997.
- Seeking to update federal child pornography law for the Internet, Congress passed the Child Pornography Prevention Act (CPPA) of 1996. Among other features, the law criminalized any visual depiction that "appears to be" child pornography, including so-called virtual porn created by

computer. After lower courts struck down provisions of the STATUTE, the U.S. Supreme Court agreed to hear an appeal in *Ashcroft v. Free Speech Coalition*, with a verdict expected in late 2002.

- The Child Online Protection Act (COPA) of 1998 revived the CDA by modifying its scope. COPA criminalized the use of the World Wide Web to sell material harmful to minors. Ruled unconstitutional, the case remained on appeal before the Supreme Court with a decision expected by summer 2002.
- The Protection of Children from Sexual Predators Act of 1998 included Internet-specific provisions for reporting child pornography to authorities and prohibiting federal prisoners from being allowed unsupervised Internet usage.
- Two federal laws regulate access to Internet pornography at libraries and schools, the Children's Internet Protection Act (CIPA) and the Neighborhood Internet Protection Act. Together, they require so-called filtering software to be installed on computers in public schools and libraries as a condition for federal funding. Both laws were challenged in court in early 2002, with their outcome uncertain.

[17] Notice the list of legal issues outlined immediately above the extent to which legal issues have almost entirely revolved around child pornography on the Internet in recent decades.

[18] There are of course outlaw regimes and remote corners of the world economy where the rule of law has not yet reached, but these are increasingly circumscribed.

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